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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF MATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of:

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A.,

RESORT HOLDINGS INTERNATIONAL,
INC. d/b/a
RESORT HOLDINGS INTERNATIONAL,
S.A.,

WORLD PHANTASY TOURS, INC.
a/k/a MAJESTY TRAVEL
a/k/a VIAJES MAJESTY

MICHAEL E. KELLY,

Respondents.

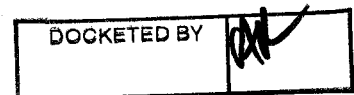
DOCKET NO. S-03539A-03-0000

RESPONDENTS' JOINT RESPONSE
AND OBJECTION TO THE
SECURITIES DIVISION'S MOTION TO
ALLOW TELEPHONIC TESTIMONY

(ASSIGNED TO THE HONORABLE
MARC STERN, ADMINISTRATIVE
LAW JUDGE)

Arizona Corporation Commission
DOCKETED

MAR 15 2005



NOW COME the Respondents, Resort Holdings International, Inc. ("RHI Inc."), Resort Holdings International, S.A. ("RHI S.A."), Yucatan Resorts, Inc. ("Yucatan Inc."), Yucatan Resorts, S.A. ("Yucatan S.A."), and Michael E. Kelly ("Kelly")(collectively, the "Respondents")

1 and file this, their Joint Response and Objection to the Securities Division's Motion to Allow
2 Telephonic Testimony and, in support thereof, would respectfully show as follows:

3
4 **I. PRELIMINARY STATEMENT**

5 On March 14, 2005, the Securities Division filed its Motion to Allow Telephonic Testimony
6 (hereinafter the "Motion"), of Thomas Crisp, Bettie Mazel, Judith Allen and Erin Harmon. None
7 of these individuals was deposed and/or subjected, to the Respondents' knowledge, to an EUO by
8 the Securities Division and, of course, none of these individuals was made available to the
9 Respondents for a deposition—even though the Respondents specifically asked for the contact
10 information of all of the Securities Division's proposed witnesses.¹ The Securities Division has
11 not provided the Respondents with any witness statements related to the testimony of the proposed
12 witnesses. All of these witnesses' testimony appears to be cumulative, and the Securities Division
13 has made no attempt to establish otherwise. Moreover, none of these individuals has claimed that
14 they are incapable of attending the Hearing; rather, the Securities Division asserts that it would be
15 more convenient for the witnesses to attend the Hearing telephonically.
16

17 The Securities Division's Motion is but one more example of the double standard the
18 Securities Division has been practicing throughout this administrative action. Every attempt to
19 obtain discovery by the Respondents has been met with a refusal to comply by the Securities
20 Division. As indicated, the Securities Division has even refused to provide the Respondents with
21 the contact information of the above-referenced individuals so that the Respondents could
22 ascertain what knowledge each individual has with regard to this matter. Contrary to the
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24

25 ¹ See, *inter alia*, Respondents, Yucatan Resorts, Inc., Yucatan Resorts, S.A., Resort Holdings International, Inc., and
26 Resort Holdings International, S.A.s' First Set of Non-Uniform Interrogatories at ¶¶ 1, and 5 - 8; Respondents' Joint
Motion to Compel or, Alternatively, to Vacate the Temporary Order to Cease and Desist; Respondents' Joint Motion
to Strike Securities Division's Reply to Respondents' Joint Motion to Compel or, Alternatively, Vacate the Temporary
Order to Cease and Desist; Request for Expedited Order; Respondents' Renewed Request for Expedited Order; and,
the Pre-Hearing Conference Transcripts for this matter.

1 Securities Division's assertion in its Motion, the Respondents' due process rights will be trounced,
2 fundamental fairness will not be achieved, and the Respondents will not be afforded a fair hearing
3 if Respondents' counsel are not permitted to examine each witness in front of the trier of fact—
4 Administrative Law Judge Marc Stern ("ALJ Stern"). Under the Securities Division's proposed
5 format, the Respondents would not even be able to examine with witnesses with Hearing exhibits
6 or with other relevant documents. This important fact, by itself, quashes any argument that
7 Respondents could ever be afforded a fair Hearing if the Securities Division's Motion were
8 granted. Therefore, the Securities Division's Motion should be denied.
9

10 II. ARGUMENTS

11 1. **The Respondents Will Not Be Able to Confront the Witnesses with Hearing Exhibits and Documents and, thus, They Will Be Denied Due Process.**

12 Though the Respondents have been repeatedly denied the right to uncover exculpatory
13 evidence through documentary discovery, there are, nonetheless, thousands of documents that
14 have been identified by the Parties as potential exhibits in this matter. If Thomas Crisp, Bettie
15 Mazel, Judith Allen and Erin Harmon are allowed to testify telephonically at the Hearing in
16 Phoenix, there will be no way for Respondents to adequately cross-examine each witness and
17 probe their memory and testimony with the Hearing Exhibits and other relevant documents. This
18 effectively deprives the Respondents of their Due Process rights.
19

20 The Respondents have fought from the first day of this administrative action to obtain
21 some semblance of due process. Every attempt by the Respondents to unearth exculpatory
22 discovery and information from the Securities Division and/or its Proposed Witnesses has been
23 denied.
24

25 To Respondents' knowledge, none of these proposed "telephonic" witnesses were
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1 subjected to an EUO—which would have permitted the Respondents to at least attend the
2 Securities Division’s interview of each witness. The Securities Division never provided any
3 witness statements from these individuals to the Respondents so that the Respondents had the
4 ability to prepare to cross-examine the witnesses. Importantly, none of these individual has
5 indicated, nor has the Securities Division asserted, that any of these proposed witnesses is
6 incapable of attending the Hearing in Phoenix. Rather, the Securities Division circumvented and
7 abused what discovery structure was in place in this matter, and conducted informal interviews
8 with these individuals while simultaneously denying the Respondents the witnesses’ contact
9 information to do the same.
10

11 The Securities Division’s Motion is a transparent plea to use the more relaxed settings of
12 administrative hearings to prejudice the Respondents by effectively removing the Respondents’
13 counsel’ ability to cross-examine the witnesses. The Respondents’ due process rights will be
14 trampled if this motion is granted. Therefore, Respondents respectfully request that the Securities
15 Division’s Motion be denied.
16

17 **2. Each of the Witnesses’ Proposed Testimony is Cumulative.**

18 The Securities Division, in its new Proposed List of Witnesses, identifies Thomas Crisp,
19 Bettie Mazel, and Judith Allen as “Universal Lease Investors.” *See* Securities Division’s Proposed
20 List of Witnesses. The Securities Division admits that every one of these individuals is being
21 called to testify concerning the sale of the Universal Lease, and the alleged sales techniques used
22 by Universal Lease sales agents. Specifically, in the new Proposed Witness Lists, the Securities
23 Division asserts that, “Crisp, a Universal Lease investor . . . can offer probative testimony as to the
24 various sales techniques used by a particular Universal Lease sales agent”² Regarding Bettie
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26

² *See* Securities Division’s Motion at p. 1, lines 1-7.

1 Mazel, the Securities Division asserted, “[a]s with Crisp, Mazel *can also provide* key information
2 concerning the means in which a Yucatan Resorts sales agent solicited her”³ Finally, with
3 regard to Judith Allen, the Securities Division claims that, “Allen *is still another Universal Lease*
4 *investor* . . . Allen can provide highly probative evidence concerning respondents’ purported
5 practice of allocating specific timeshare units to specific investors.”⁴ In other words, Judith Allen,
6 like Thomas Crisp and Bettie Mazel, can testify to purchasing the Universal Lease, and the sales
7 techniques utilized therewith.
8

9 Importantly, the Securities Division’s new Witness List also provides that Dwight H.
10 McKinnie, Marjorie E. McKinnie, Robert Newland, and Raymond Bryce Huntley are all
11 “Universal Lease Investors.”⁵ The Securities Division also lists Janalee R. Sneva, John Donovan,
12 John Tencza, Tyson Hiland and Michael Anthony Diaz as “Universal Lease sales agents.”⁶
13 Because of the testimony of the foregoing witnesses, as described by the Securities Division, will
14 unquestionably relate to sales techniques, the testimony of Thomas Crisp, Bettie Mazel, and Judith
15 Allen not only is unnecessary, but is also cumulative.
16

17 Arizona Rules of Evidence 403 provides that, “[a]lthough relevant, evidence may be
18 excluded if its probative value is substantially outweighed by the danger of unfair prejudice,
19 confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time,
20 or needless presentation of cumulative evidence.” Even assuming the subject witnesses’ testimony
21 is relevant, this duplicative testimony constitutes an undue delay of the proceedings and a waste of
22 time and a needless presentation of cumulative evidence.
23

24 This analysis is also applicable to Erin Harmon. Indeed, the Securities Division identifies
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26 ³ *Id.* (emphasis supplied).

⁴ See Securities Division’s Motion at p. 1, lines 1-21 (emphasis supplied).

⁵ See Securities Division’s Proposed List of Witnesses.

⁶ *Id.*

1 Ms. Harmon, on its new Proposed Exhibit List, as an "[e]mployee of Yucatan Resorts & Resort
2 Holdings International."⁷ The Securities Division also identifies Patrick Ballinger, Randy Lueth,
3 Roy Higgs and Michael Crumly as former employees and/or associates of the Respondents.⁸
4 Thus, Ms. Harmon's testimony also constitutes an undue delay of the proceedings, and a needless
5 presentation of cumulative evidence. *See* Arizona Rule of Evidence 403.
6

7 For each of the foregoing reasons, the Securities Division's Motion should be denied.

8 **3. Respondents' Joint Motion for Continuance.**

9 On Monday, March 14, 2005, the Respondents filed their Joint Motion for Continuance,
10 which is hereby incorporated herein by reference. In addition to the reasons set forth in the
11 Respondents' Joint Motion for Continuance, this Hearing should be continued to afford the
12 Respondents time to interview or depose the subject witnesses in advance of Hearing. This could
13 obviate the need for the witnesses to attend the Hearing, and would address all of the Securities
14 Division's concerns as set forth in its Motion.
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16 **III. CONCLUSION.**

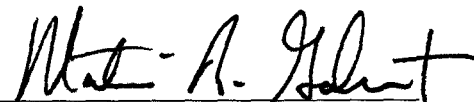
17 For all of the foregoing reasons, the Securities Division's Motion to Allow Telephonic
18 Testimony should be denied. Further, Respondents' Joint Motion for Continuance should be
19 granted.
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⁷ *Id.*

⁸ *Id.*

1 Respectfully submitted this 15th day of March, 2005.

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1 ORIGINAL and 13 copies of the foregoing
2 hand-delivered this 15th day of March, 2005 to:

3 Docket Control
4 Arizona Corporation Commission
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6 Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered
8 this 15th day of March, 2005 to:

9 Copy hand-delivered this 15th day of March, 2005 to:

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